

The defendant also submits that damages in this case are limited to the amount set out in the penalty clause.

The plaintiff originally claimed damages in the sum of Singapore \$207,000, being 2% of the total contract price, but this claim was later amended.

The clause provides:

"If the buyer fails to establish the L/C as mentioned above and if the seller fails to deliver the goods in the above mentioned conditions the defaulting party is liable to pay 2% of the amount."

This is clearly a penalty. A penalty covers but does not assess the damage: *Public Works Commissioner v. Hills*.⁽⁷⁾ Where, however, the stipulated sum does not compensate for the actual loss suffered, the plaintiff has an election. He may either sue on the penalty clause, in which case he cannot recover more than the stipulated sum; or he may sue for breach of contract and recover damages in full: *Wall v. Rederiaktibolaget & Luggude*,⁽⁸⁾ approved in *Watts, Watts & Co. Ltd. v. Mitsui Co. Ltd.*⁽⁹⁾

There will therefore be judgment for the plaintiff in the sum claimed and costs.

Judgment for the plaintiff.

Solicitors: Chor Pee & Hin Hiong; Rodyk & Davidson.

**WEE TOON LIP & 3 ORS. v.
THE MINISTER FOR HOME AFFAIRS,
SINGAPORE & ANOR.**

[O.C.J. (Wee Chong Jin C.J.) March 25, 1972]

[Singapore — Originating Motion No. 8 of 1971]

Criminal Law and Procedure — Habeas corpus — Detention under Internal Security Act (Cap. 115, 1970 Ed.).

Constitutional law — Internal Security Act (Cap. 115, 1970 Ed.), s. 8 — Detention under — Allegation that detention was mala fides, improper and unlawful.

Internal Security — Prolonged detention — Whether bad faith a justiciable issue — Internal Security Act (Cap. 115), s. 8.

This was a joint application by four applicants for a writ of *habeas corpus*. They were detained under the Internal Security Act, (Cap. 115).

In a joint affidavit the applicants claimed that their prolonged detention of over seven years and, in particular, in the Central Police Station lock-up for several months "is most improper and constitutes the greatest abuse of the law."

In a subsequent affidavit, the applicants alleged "lack of good faith surrounding (their) prolonged detention", and at the hearing, relied on another ground that the detention was unlawful because the orders of detention made on November 20, 1967 were unlawful orders.

Held: (1) the applicants were unable to show that their lengthy period of detention or their detention at the central police station lock-up was contrary to the provisions of section 8 of the Internal Security Act;

(2) the allegation of lack of good faith surrounding their prolonged detention was not only a mere unsubstantiated allegation, but it was not clear against whom it was made.

A In any event, "bad faith" was not a justiciable issue in the context of the Internal Security Act;

(3) the orders of detention made on November 20, 1967 were valid and lawful orders and were in strict compliance with section 8 of the Act, therefore the application must be dismissed.

Case referred to:-

(1) *Lee Mau Seng v. Minister for Home Affairs, Singapore & Anor.* [1971] 2 M.L.J. 137.

B

MOTION.

T. T. Rajah for the applicants.

Francis T. Seow (Solicitor-General) (*Kan Ting Chiu*, Deputy Public Prosecutor, with him) for the respondents.

Cur. Adv. Vult.

C

Wee Chong Jin C.J.: This is a joint application by the abovenamed four applicants for a writ of *habeas corpus*. They are being detained under the Internal Security Act (Cap. 115), (hereinafter referred to as "the Act").

D

In a joint affidavit the applicants say they have all been detained under the Act since 1963 and that for the past few months they have been detained at the Central Police Station lock-up under abnormal and punitive conditions. They claim that their prolonged detention of over seven years and, in particular, in the Central Police Station lock-up for several months "is most improper and constitutes the greatest abuse of the law".

E

In a subsequent affidavit the applicants allege "lack of good faith surrounding (their) prolonged detention" and at the hearing of their application they rely on yet another ground, namely that all of them are presently being unlawfully detained because the orders of detention which purport to cover their detention are unlawful orders.

F

With regard to their first contention, namely improper detention and grave abuse of the law, the power to detain, the place of detention and the manner of detention are all governed by section 8 of the Act. The applicants have been unable to show that their lengthy period of detention or their detention at the Central Police Station lock-up is contrary to the provisions of section 8.

G

With regard to their allegation of lack of good faith surrounding their prolonged detention it is not only a mere unsubstantiated allegation but it is not clear against whom the allegation of bad faith is made.

H

In any event "bad faith" is not a justiciable issue in the context of the Act [see *Lee Mau Seng v. Minister for Home Affairs, Singapore & Anor.*⁽¹⁾].

The last submission made by the applicants is a technical one and arises out of four orders made by the Minister all dated 20th November 1967 in respect of the four applicants. It will be sufficient to set out the material provisions of one of these four orders and it reads thus:—

"

The Internal Security Act, 1960.
(No. 18 of 1960).

Cancellation of orders under section 81(3).

I, LIM KIM SAN, Minister of Defence, hereby order the cancellation of the order(s) made by the Minister of Defence

under section 8(1A) of the Internal Security Act, 1960, purporting to extend the period(s) of an order of detention made under section 3(1) of the Preservation of Public Security Ordinance, 1955, in respect of Wee Toon Lip @ Ng Toon Lee @ Ng Soon Yee @ Wee Zoon Lip N.R.I.C. No. S3W. 05674 (OLD) of 33 Greenmeade Avenue, Singapore and dated the 23rd day of October 1965 and the 23rd day of October 1967 respectively.

This Order shall take effect immediately without prejudice to the previous validity of such Orders hereby cancelled or to anything done thereunder.

Dated this 20th day of November, 1967.

Sd: Lim Kim San
(Lim Kim San)
Minister of Defence,
Singapore."

The argument is that the Minister had no power to order the cancellation of the earlier order made on 23rd October 1967 which was an order of extension of a detention order. The power to make an order of extension is conferred by section 8(1A) of the Act on the President of the Republic and on the true construction of section 82(3) the President, and not the Minister, has the power to cancel an order of extension. I accept that argument and indeed it is conceded on behalf of the respondents but it is of no real assistance to the applicants.

On the same day as the orders of cancellation were made, four fresh detention orders were made under section 8(1)(a) of the Act and the argument is advanced on behalf of the applicants that the fresh detention orders and the cancellation orders were interdependent so that they must all stand or fall together. This argument is manifestly untenable.

Another argument is that the President's mind was not properly directed to whether or not it was necessary for each of the four applicants to be detained under section 8(1) because the four fresh detention orders were made on the same day as the four orders of cancellation. That is an inference I am not prepared to make and in any event the argument is effectively met by an affidavit of the then Permanent Secretary to the Ministry of the Interior and Defence filed in these proceedings. Paragraph 4 of this affidavit reads:—

"I am familiar with all the facts relating to the detention of all the applicants herein. In this connexion, I crave leave to refer to the orders of cancellation made by my then Minister, the aforesaid Mr. Lim Kim San, and say that on or about the 20th day of November, 1967, the then Minister of Defence signed the aforesaid orders of cancellation exhibited in the aforesaid joint affidavit and that before he did so, he received the direction of the then President, who also directed that fresh orders of detention for a period of two years with effect from the 20th day of November, 1967, be issued against them".

In my judgment there can be no doubt at all that the four orders of detention made on the 20th of November 1967 in respect of the four applicants were valid and lawful orders and were in strict compliance with section 8 of the Act and in those circumstances the joint application for a writ of *habeas corpus* must fail and be dismissed with costs.

Application dismissed.

Solicitor: T. T. Rajah.

A MALAYSIAN REPORTS

NADARASA v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Hamid J.) February 24, 1972]

[Kuala Lumpur — Criminal Appeal No. 56 of 1971]

Evidence — Burden of proof — Corruption charge — Prosecution to establish charge beyond reasonable doubt — Proof on balance of probabilities not applicable in criminal cases.

Bribery and Corruption — Charge of corruption — Burden of proof — Requisite onus on prosecution and defence — No presumption arising — Prevention of Corruption Act, 1961, s. 14.

The accused had been convicted for corruption under the Prevention of Corruption Act. He appealed on the ground that the president of the sessions court had misdirected himself on the burden of proof. The learned president in his grounds of judgment stated: "The burden of proof on the accused is as stated in *Public Prosecutor v. Yuvaraj*⁽¹⁾ but accused failed to prove on a balance of probability that the money came to be in his left trouser pocket as he had claimed." The question of any presumption under section 14 of the Act did not arise in this case.

Held, allowing the appeal: the learned president had gravely misdirected himself as to the burden of proof. Proof on balance of probabilities has no application in criminal cases. The fundamental principle in criminal cases is that the burden is throughout on the prosecution and it is not for the accused to prove his innocence. To entitle an accused to an acquittal, it is sufficient if after considering the defence, he has cast a doubt on the prosecution case.

Cases referred to:—

- (1) *Mat v. Public Prosecutor* [1963] M.L.J. 263.
- (2) *Mahadi v. Public Prosecutor* [1970] 1 M.L.J. 16.
- (3) *Public Prosecutor v. Yuvaraj* [1969] 2 M.L.J. 89, P.C.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph Jr. for the appellant.

Hashim bin Abdul Majid (Deputy Public Prosecutor) for the respondent.

Abdul Hamid J. (delivering oral judgment): This is an appeal by Nadarasa alias Nadaraja son of Muthuthamby against the decision of the president of the sessions court in Klang who convicted the appellant on the following amended charge —

"That you on 17 November 1969 between 4.45 p.m. and 6.00 p.m. at No. 44, Jalan Thomson, Pandamaran New Village, Port Swettenham, in the District of Klang, in the State of Selangor, did corruptly receive for yourself gratification to wit cash \$50.00 from one Te Bun Chin as inducement to your doing a proposed transaction to wit assisting the said Te Bun Chin in obtaining the citizenship certificate for one Te Loy Sang and Teh Sew Lai, and thereby committed an offence punishable under section 3(a)(i) of the Prevention of Corruption Act, 1961."

On conviction the appellant was fined \$5,000 in default 2 years' imprisonment. The appellant has appealed on a number of grounds. I shall deal with the following —

- (a) that the president erred in law (i) in misdirecting himself as to the burden of proof; not only the burden on the prosecution but that on the defence as well; and (ii) in failing to appreciate that the burden on the prosecution was not to prove the case on the "balance of probability" but to tender evidence which established the case against the appellant beyond all reasonable doubt.